

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1338

NO. 76-1338

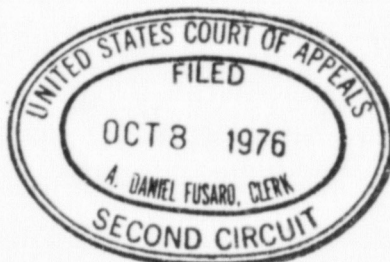
IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA :
-against- :
ALAN GOTTFRIED, :
Appellant. :
-----X

B
P/S

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

A P P E N D I X



FREDERICK H. COHN
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NEW YORK, NEW YORK 10007
(212) 349-7755

PAGINATION AS IN ORIGINAL COPY

NO. 76-1338

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

-against-

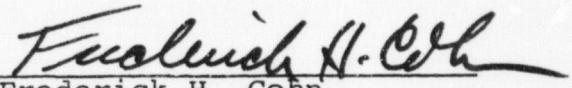
ALAN GOTTFRIED,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

A P P E N D I X

Submitted by:


Frederick H. Cohn
Attorney for Appellant

I N D E X

	<u>Page</u>
Indictment.....	1a
List of Docket Entries.....	5a
Memorandum Endorsement decision on Motion to Dismiss.....	7a
Transcript:	
Minutes of Plea.....	8a
Minutes of Sentencing Proceeding.....	23a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
-v- :
:
JAIME ERNESTO DIEZ :
ALLEN GOTTFRIED, and :
STUART GOTTESMAN, :
:
Defendants. :
:
-----X

INDICTMENT 76-1265

COUNT ONE

The Grand Jury charges:

1. From on or about the 20th day of April, 1975, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JAIME ERNESTO DIEZ, ALLEN GOTTFRIED and STUART GOTTESMAN, the defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II

narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to the effect the objects thereof, the following overt acts were committed in the Southern District of New York.

1. On or about April 29, 1975, the defendant, ALLEN GOTTFRIED, met with an undercover agent and engaged in a conversation concerning the sale of cocaine.

2. On or about May 6, 1975, the defendant, ALLEN GOTTFRIED, placed a telephone call and engaged in a conversation concerning the sale of cocaine.

3. On or about May 6, 1975, the defendants, ALLEN GOTTFRIED and STUART GOTTESMAN, sold approximately 27.1 grams of cocaine hydrochloride.

4. On or about May 21, 1975, the defendants, ALLEN GOTTFRIED and STUART GOTTESMAN, sold approximately 28.7 grams of cocaine hydrochloride.

5. On or about July 9, 1975, the defendants, STUART GOTTESMAN and JAIME DIEZ, engaged in a conversation concerning the sale of cocaine.

6. On or about July 9, 1975, the defendants, STUART GOTTESMAN and JAIME DIEZ, sold approximately 77.70 grams of cocaine hydrochloride.

7. On or about August 28, 1975, the defendant JAIME DIEZ, sold approximately 115.8 grams of cocaine hydrochloride.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On or about the 6th day of May, 1975, in the Southern District of New York, JAIME ERNESTO DIEZ, ALLEN GOTTFRIED, and STUART GOTTESMAN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 27.1 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 21st day of May, 1975, in the Southern District of New York, JAIME ERNESTO DIEZ, ALLEN GOTTFRIED and STUART GOTTESMAN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 28.7 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 9th day of July, 1975, in the Southern District of New York, JAIME ERNESTO DIEZ and STUART GOTTESMAN, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 77.70 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2)

COUNT FIVE

The Grand Jury further charges:

On or about the 29th day of August, 1975, in the Southern District of New York, JAIME ERNESTO DIAZ, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 115.8 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOREMAN

THOMAS J. CAHILL
United States Attorney

IV. PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

(a) (b) (c) (d)

Amicus present - B/W issued re to deft. Gottfried.....Pierce J

Filed Sealed Envelope - To be sealed after dictating & not to be opened without an order of the undersigned or another Judge of this court.....Pierce J. dtd. 3-9-76.

Filed Mem. End. on motion dtd. 2/24/76. Motion Denied.....Pierce J. (mailed notice)

Dft. Gottfried Present (Atty. Fred Cohn Present) withdraws plea of Not Guilty & Pleads Guilty on count 1 only. P.S.I. Ordered Sentence 7/15/76 @ 4:30 P.M. Bail of \$10,000. P.B. Unsecured cont'd.....Pierce J.

Filed Judgment & Commitment (Atty. Fred Cohn Present) It is adjudged that the imposition of sentence is suspended on count 1, & the dft. is placed on probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. A condition of probation being that dft. continue mental health treatment. Counts Two & Three are dismissed on motion of dft's. counsel with the consent of the Gov't....

.....Pierce J.
Issued Commitment 7-16-76.

Filed dft's notice of appeal mailed copies.

Filed affidavit of Robert Allan, re: services rendered under C.J.A.

EXCLUDED CODES

Perjury
False Evidence
U.S.C. 2381-2385

A. Perjury
B. False Evidence
C. State or Federal
D. Interlocutory
E. Hearing on
F. Transfer of
G. Other P.B. Code
H. Rules 20, 21
& 40.

B. NARA Exam
C. State or Federal
D. Interlocutory
E. Hearing on
F. Transfer of
G. Other P.B. Code
H. Rules 20, 21
& 40.

C. State or Federal
D. Interlocutory
E. Hearing on
F. Transfer of
G. Other P.B. Code
H. Rules 20, 21
& 40.

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H. Rules 20, 21
& 40.

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H. Rules 20, 21
& 40.

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& 40.

I. Prosecution de
J. Unavailability
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Interval
End Date
Code
Days

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.

UNITED STATES OF AMERICA

-against-

ALLAN GOTTFRIED,

Defendant

NOTICE OF MOTION
TO DISMISS

FREDERICK H. COHN

Attorney for Defendant Gottfried

Office and Post Office Address, Telephone

290 Broadway

NEW YORK, NEW YORK 10007

(212) 540-7755

To Constance Cushman, Esq.

Attorney(s) for Asst. U.S. Attorney

Service of a copy of the within

is hereby admitted

9-4
UNITED STATES v. GOTTFRIED, 75 Cr. 1265.

ENDORSEMENT ORDER

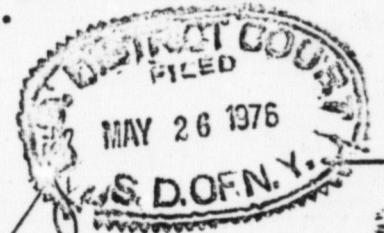
Defendant Gottfried has moved to dismiss the instant indictment on the ground that by vesting the Attorney General with the authority to make certain determinations concerning the classification to controlled substances within the Comprehensive Drug Abuse Prevention and Control Act of 1970 the Congress has impermissibly delegated a legislative function to the Attorney General. Defendant argues that the statute under which he was indicted for possession and distribution of cocaine hydrochloride, a Schedule II drug, is therefore unconstitutional.

As the affidavit submitted by the defendant in connection with this motion makes clear, there has been no decision by the Attorney General reclassifying cocaine. Nor does it appear that any is contemplated. Therefore, the power which defendant attacks as unconstitutionally delegated to the Attorney General has never been exercised by that officer. Under these circumstances, the defendant's application is premature and the Court will not rule upon the constitutionality of the delegation. See California Bankers Assn. v. Schultz, 416 U.S. 21, 55-56 (1974). See generally United States v. Rubely, 345 U.S. 41, 48 (1953).

The motion is denied.

SO ORDERED.

Dated: New York, New York
May 24, 1976



U.S.D.J.

1 rksr

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA, :

6 - v s - :

75 Cr. 1265

7 ALLAN GOTTFRIED, :

8 Defendant. :

9 -----x

10
11 B e f o r e :

12 HON. LAWRENCE W. PIERCE,

13 District Judge.

14 New York, New York
15 June 3, 1976 - 11:30 a.m.

16
17 A p p e a r a n c e s :

18 ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
19 Southern District of New York;
By: CONSTANCE CUSHMAN, ESQ.,
20 Assistant United States Attorney.

21 FRED COHN, ESQ.,
For the Defendant.
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MR. KOHN: Your Honor, at this time pursuant to some agreement with the United States Attorney's Office as to Count 1 of the indictment, Mr. Gottfried wishes to change his plea and to plead guilty to that count, that is the conspiracy count, your Honor.

THE COURT: Is that satisfactory to the Government?

MS. CUSHMAN: It is satisfactory to the Government.

THE COURT: What is the understanding?

MR. COHN: The understanding is that on sentence of this matter, the Government will move to dismiss the other counts against this man and to make whatever cooperation he has given to the Government known to the Court in aid of sentence.

THE COURT: Is that correct?

MS. CUSHMAN: That is correct. The way I understand it, we will not oppose a motion to dismiss the other counts but the end result is the same.

MR. COHN: There was a motion to dismiss, your Honor, and as I understand it, your Honor has agreed and the Government has agreed that we preserve our right to appeal that denial of the motion to dismiss.

THE COURT: Satisfactory, Mrs. Cushman?

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2 MS. CUSHMAN: It is satisfactory to the Govern-
3 ment.

4 EXAMINATION BY

5 THE COURT:

6 Q What is your name, sir?

7 A Allan Gottf-ied.

8 Q How old are you?

9 A 29.

10 Q Date of birth?

11 A 12/29/46.

12 Q You do read, write, speak and understand English,
13 do you not?

14 A Yes, sir.

15 THE COURT: Which of the overt acts does the
16 Government feel should be pursued?

17 MS. CUSHMAN: Your Honor, those relating to
18 the situation of May, 1975.

19 THE COURT: Read the indictment, Count 1 of
20 the indictment to Mr. Gottfried and see how he offers to
21 plead to Count 1.

22 [Count 1 of the indictment read.]

23 THE COURT: Do you understand the charge on
24 Count 1 of this indictment?

25 THE DEFENDANT: Yes.

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THE CLERK: How do you offer to plead?

THE DEFENDANT: Guilty.

BY THE COURT:

Q What do you normally do for a living?

A Salesman.

Q For whom?

A My last job I was a salesman for American Motors.

I was a car salesman in a dealership in Ozone Park.

Q How long did you work for them?

A Three months.

Q Before that?

A I was working part time with Waldbaum's in the

appetizing department as a clerk until I found a job as
a salesman.

Q For how long?

A I did that about four months.

Q What is the longest period of time you have

been employed somewhere?

A About sixteen months.

Q Where and when?

A Metro-Goldwyn-Mayer. I was a motion picture

booking agent.

Q Where?

A I was working here in New York in their branch

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2 office from approximately 1967 -- '66 until September of
3 '68. I don't remember the exact date, in June or July,
4 '68, I was transferred and I was working out of the Boston,
5 Massachusetts office for MGM.

6 Q Are you currently or have you recently been un-
7 der the care of a physician or psychiatrist?

8 A I am under the care of a psychologist.

9 Q For how long?

10 A Since last July or August.

11 Q For what?

12 A I had been disturbed. I didn't want to get into
13 trouble. I had realized at that time that my thinking
14 wasn't right. I knew I needed help and I was finan-
15 cially in trouble and I was desperate because I needed
16 help and I wasn't getting any more help from my family
17 and friends so I went and applied for welfare because I
18 was having trouble collecting my unemployment at the time
19 and I explained to them that I wanted help because I
20 didn't want to do anything to get into trouble.

21 Q What psychologist have you been going to?

22 A It is Mr. Gregory

23 MR. COHN: Your Honor, I do have a handwritten
24 report made to me in February of this year which in aid
25 of the Rule 11 proceeding, I would be glad to hand up

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up to the Court. There will be an update for any sentencing procedure.

If I may also, since I did not make copies, after the proceeding if I may take the original and supply copies back, I would appreciate the opportunity.

MS. CUSHMAN: May we have an opportunity to see that also, your Honor?

THE COURT: Yes.

MR. COHN: It just says he is competent.

BY THE COURT:

Q Have you been going and do you continue to go weekly?

A Yes.

Q Are you still under medication, Mr. Gottfried?

A No, not at this time.

Q Have you ever been treated for any narcotic addition or any other type of drug abuse?

A No, sir.

Q Are you feeling well today?

A Yes, sir.

Q Do you understand what is going on here today?

A Yes.

Q Do you understand what your lawyer is and has been saying to you?

1 rksr

2 A Yes.

3 Q Do you understand what I am and what I have been
4 saying to you?

5 A Yes.

6 Q And you have received a copy of the indictment
7 against you?

8 A Yes.

9 Q And you have been over it with Mr. Cohn?

10 A Yes.

11 Q And he has explained to you what the charge
12 here is against you in this Count 1?

13 A Yes.

14 Q Do you fully understand it?

15 A Yes, sir.

16 Q You have told your lawyer everything you know
17 about this matter?

18 A Yes.

19 Q You have not held anything back from him?

20 A That is true.

21 Q Do you understand that if you did not plead
22 guilty, you would have a right to a speedy and public trial
23 by a jury of twelve people?

24 A Yes.

25 Q Do you understand that upon such a trial, you

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2 would be presumed innocent unless and until the Government
3 established your guilt beyond a reasonable doubt to the
4 satisfaction of all twelve jurors?

5 A Yes.

6 Q Do you understand that upon such a trial,
7 you would have the right to confront and cross-examine
8 all witnesses called by the Government against you?

9 A Yes.

10 Q And that upon such a trial, you could remain
11 silent, no inference could be drawn against you by reason
12 of your silence or if you wanted to, you could take the
13 stand and testify in your own defense?

14 A Yes, sir.

15 Q Do you understand that if you wanted to, you
16 could have a trial before a Judge without a jury in
17 which event the same things would be true, the burden
18 would still be on the Government and you would have the
19 same constitutional rights?

20 A Yes.

21 Q You understand you would have the right at a
22 trial to subpoena witnesses and evidence for your own
23 defense?

24 A Yes.

25 Q Do you understand if your offer to plead guilty

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2 is accepted, you give up these rights with respect to
3 Count 1?

4 A Yes.

5 Q And the Court can impose sentence upon you just
6 as if the jury had brought in a verdict of guilty against
7 you as to Count 1?

8 A Yes.

9 Q Do you understand that upon your plea of guilty
10 to this charge being accepted by the Court, the Court has
11 the power to impose upon you a fine of up to \$25,000 and
12 a term of imprisonment of up to fifteen years, plus three
13 years of special parole term to follow any prison term?

14 Do you understand that is the maximum sentence
15 that could be imposed in this case?

16 A Yes.

17 Q Do you want me to read that again?

18 MR. COHN: I think you better.

19 Q The maximum prison term would be fifteen
20 years. In other words, the Court could sentence you up
21 to fifteen years and/or impose a fine of up to \$25,000
22 plus place you on three years' special parole to follow
23 any prison term.

24 A Yes, I understand that.

25 Q Have you been induced to offer to plead guilty

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2 by reason of any promises or statements or predictions by
3 anybody to the effect that you would get leniency or
4 special treatment or consideration if you pleaded guilty
5 instead of going to trial?

6 A No, sir.

7 Q Have you been induced to plead guilty by reason
8 of any fear or pressure or the like?

9 A No, sir.

10 Q Is there anything you wish to ask about the
11 charge or the consequences of pleading guilty at this time?

12 A No, sir.

13 Q Do you understand that?

14 May we understand that you are offering to
15 plead guilty to Count 1 because you believe you are guilty
16 of that charge?

17 A Yes, sir.

18 THE COURT: Does the Government represent
19 that it has sufficient evidence to make a prima facie
20 case?

21 MS. CUSHMAN: Yes.

22 THE COURT: Counsel, you know of no valid
23 legal defense that would prevail if he went to trial?

24 MR. COHN: I do not.

25 Q And you still wish to plead guilty to Count 1?

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2 A Yes.

3 Q You have to tell me what it is you say you did
4 that causes you to offer to plead guilty. I am interested
5 in the time, the place, the geographic location and
6 what happened.

7 A Around the end of April, I met with a nar-
8 cotics agent at the time I didn't know.

9 Q Was that last year?

10 A 1975 and we engaged in a conversation and he
11 wanted to purchase cocaine and I told him at that time
12 that I might be able to set him up or introduce him
13 to someone that would be willing to sell it to him.

14 Q Where did this take place?

15 A It was Seventh Avenue south near -- it was in
16 the 80's on Seventh Avenue south in Manhattan. I don't
17 remember the exact number.

18 Q Here in Manhattan?

19 A Yes.

20 Q What happened next? On May 6th did you do
21 something by way of a telephone call?

22 A Yes. I called up this agent, his name as I knew
23 him was Mike.

24 Q What did you discuss?

25 A We discussed his purchasing a quantity of

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2 cocaine.

3 Q Then on May 6th, did you actually do something
4 with respect to cocaine?

5 A Yes.

6 Q What did you do?

7 A I introduced him to Stewart Gottesman and
8 we took a car ride to the Bronx and Mike, the agent, gave
9 me the money and I went and got the cocaine and brought
10 it back to him.

11 Q Brought it back and gave it to him?

12 A Yes.

13 Q You knew it was cocaine?

14 A Yes.

15 Q You knew it was against the law to sell or
16 distribute or traffic in cocaine?

17 A Yes.

18 Q Or to conspire to do so, correct?

19 A Yes.

20 Q You know what I mean to conspire?

21 A To talk about.

22 Q To agree and then to do something actually
23 to bring it about. You knew it was against the law to
24 do that?

25 A Yes.

1 rksr

13

2 Q You knew what you were doing at the time, is
3 that correct?

4 A Yes.

5 Q And you intended to do what you were doing at
6 the time?

7 A Yes.

8 Q And it was your intention to distribute the
9 cocaine as a part of this agreement, is that correct?

10 A Yes.

11 Q And you agreed to do all of this with what
12 persons?

13 A Stewart Gottesman and Jimmie Diaz
14 and the Federal agent.

15 THE COURT: Is there anything else, Miss
16 Cushman?

17 MS. CUSHMAN: Nothing, your Honor.

18 THE COURT: Anything else, counselor, at this
19 point on that part of it?

20 MR. COHN: No, sir.

21 THE COURT: The plea of not guilty to Count
22 1 is withdrawn. The plea of guilty to Count 1 is
23 accepted and the Clerk is directed to enter that plea.
24 A pre-sentence report is requested. Counsel will make
25 his client available to the Probation Department and the

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2 matter is set down for sentence on July 15th at 4:30.

3 That will be in Room 307.

4 MR. COHN: Your Honor, it is possible we may
5 ask to have the sentencing in the robing room or in
6 chambers. I am not certain at this time.

7 THE COURT: Let me just ask counsel to arrange
8 to go to the Probation Department before July 15th, a day
9 or two before and to read the probation report there.
10 Do not come to my chambers to read it. Read it at the
11 Probation Office. The purpose of that being, if you have
12 any changes, any corrections, you can bring it to the
13 attention of the probation people right then and there
14 so when I get it, that is finished, presumably.

15 MR. COHN: Does your Honor intend to have a
16 pre-sentencing conference under the new rules?

17 THE COURT: There are no new rules in this
18 District.

19 MR. COHN: Not yet.

20 THE COURT: If you have some suggestion that
21 you wish to make in some fashion other than you would
22 normally make from where you are presently standing, why
23 don't you put it in the form a letter and submit it. You
24 can consider sending a copy to Miss Cushman and I will
25 consider that to be the conference unless more is

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2 MR. COHN: Very well. May I have back the
3 letter I gave and I will give your chambers and Miss
4 Cushman a copy this afternoon.

5 THE COURT: On the question of bail, what is
6 the bail situation?

7 MS. CUSHMAN: Your Honor, there is in fact a
8 \$10,000 PRB bond and the Government has no objection to
9 that being continued.

10 THE COURT: Same bail. July 15th at 4:30.

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DW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

United States of America

v.

75 Cr. 1265

Allan Gottfried,

Defendant.

-----x

July 14, 1976
4:30 p.m.

BEFORE:

HON. LAWRENCE W. PIERCE,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.,
United States Attorney

Constance Cushman, Esq.,
Assistant United States Attorney

Frederick H. Cohn, Esq.,
Attorney for Defendant.

1 THE COURT: Now appearing for the Government is
2 Assistant United States Attorney Constance Cushman.

3 MISS CUSHMAN: That's correct.

4 THE COURT: For the defendant is Mr. Fred Cohn.

5 MR. COHN: Yes, your Honor.

6 THE COURT: And the defendant, Allen Gottfried.
7 Mr. Cohn on behalf of the defendant has reviewed the
8 presentence report with the exception of the
9 evaluative summary. Correspondence has been received
10 on behalf of Mr. Gottfried including one letter from
11 the defendant himself.

12 Now, Mr. Gottfried, you are now before the Court
13 for sentencing.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: On July 4, 1976, you pleaded guilty
16 to the offense charged in Count One of the indictment.
17 In substance you were convicted of conspiracy to dis-
18 tribute and possess with intent to distribute cocaine
19 in violation of Federal Law. For the offense charged
20 in Count One of the indictment the law provides a maxi-
21 mum punishment of up to 15 years in jail, prison that
22 is, or a fine of up to \$25,000 or both, and in addition,
23 if a term of imprisonment is imposed the law requires
24 that a special term of probation of at least three
25 years be imposed. Mr. Cohn, do you know of any reason

1 why sentence should not be imposed at this time?

2 MR. COHN: No, I do not.

3 THE COURT: What information do you have to
4 present in mitigation of sentence on Mr. Gottfried's
5 behalf?

6 MR. COHN: Well, your Honor, to get by that, and
7 I think Miss Cushman will confirm that he did cooperate
8 with the government. As a result of his cooperation the
9 codefendant, Allan Gottisman, was apprehended and I
10 believe is either going to or has taken a Rule 20 Plea
11 in California.

12 MISS CUSHMAN: That's correct, your Honor. The
13 papers have all been transferred to California for a
14 plea under Rule 20, but the plea has not been --

15 THE COURT: What happened to Diaz? Did I have
16 Diaz?

17 MISS CUSHMAN: Diaz is a fugitive. He appeared
18 in answer to the indictment and he is --

19 THE COURT: Bench warrant is outstanding?

20 MISS CUSHMAN: Bench warrant is outstanding. His
21 whereabouts are unknown.

22 MR. COHN: I represent to the Court that as far as
23 I know Mr. Gottfried doesn't know where Mr. Diaz is.

24 THE COURT: All right. Now, Diaz was the heavy
25 in this situation as I recall it.

1 MISS CUSHMAN: That's correct, your Honor.

2 THE COURT: All right.

3 MR. COHN: Now, I've read the probation report as
4 you indicated. Quite honestly it was one of the most
5 sympathetic probations reports I've had the pleasure
6 to read in some time. But this is an unusual case
7 because I think, your Honor, although I'm not practicing
8 forever, I've been practicing criminal law approximately
9 ten years, this is one of the few times I've seen
10 where I can really say that contrition exhibited to
11 the Court at the time of sentence is not feigned for
12 the purpose of influencing the Court.

13 There are special circumstances here. This
14 conspiracy includes four sales but all persons agree,
15 the therapist for Mr. Gottfried as well as the proba-
16 tion officer who writes down that he abandoned this
17 conspiracy after two sales, and it was because he
18 recognized the nature of his acts even then not under
19 the compulsion of imminent arrest. He didn't know
20 that the government was looking for him. He didn't
21 know that these people that he had been dealing with
22 were in fact agents of the DEA.

23 And I think that's exceedingly important in what
24 you do here because I think that he is a long way home
25 towards rehabilitation. His problems are problems as

1 I see them, and I say this not as an advocate because
2 I think advocacy in reality stops at the time you take
3 the plea, and here I either have to say something
4 realistic or forever lose my credibility with judges
5 if I'm going to recommend any sentence at all, and
6 some times of course I say I don't have any recommenda-
7 tion, be merciful. That's not the case in this situ-
8 ation; but he's got substantial problems.

9 That doesn't mean he's a psychotic. I don't think.
10 I think given the studies you have you don't have to
11 send him for a 90-day study, but I think that he has
12 problems, and what is impressive is that at long last
13 he's trying to meet them on his own. His father is
14 here in court. His father I believe wrote to you.
15 He comes from a decent family.

16 THE COURT: Come up, sir.

17 (Mr. Gottfried, Sr., stands at bench.)

18 MR. COHN: The family itself is beset by other
19 troubles of this nature. I think the probation report
20 alludes to that. He's finally gotten himself a job
21 as a parts clerk for Volkswagen, if he's free on the
22 19th which is the day he's supposed to commence. I
23 know for a fact that the employer knows of this situa-
24 tion. He's been specifically told of this situation
25 and it's not like somebody has hidden it from him.

1 Under all these circumstances I think that he ought to be
2 given a chance to continue his rehabilitation. I think that
3 a period of probation is certainly warranted. I don't think
4 it would serve either the government's purpose or even the
5 deterrent purpose under the circumstances here to put the
6 defendant in jail. I must say it was cocaine. It's a
7 serious drug. I mean it's not marijuana. It's a Schedule
8 2 drug. On the other hand, there were small amounts. He
9 wasn't a regular dealer. He made \$250 out of both deals.
10 That's not severly; that's jointly.

11 Under those circumstances I think that he probably
12 does deserve another chance.

13 THE COURT: Mr. Gottfried, refeiring to the son,
14 do you know of any reason why sentence should not be imposed
15 upon you at this time?

16 THE DEFENDANT: No, sir.

17 THE COURT: Anything you want to say on your own
18 behalf or any information you wish to present in mitigation
19 of sentence?

20 THE DEFENDANT: Well, I feel that Mr. Cohn has
21 just said just about everything I would like to say. I
22 would like to stress the fact that I do recognize where I
23 did wrong and have been attempting and succeeding, I think,
24 on the road to rehabilitation and I am trying very hard.

25 THE COURT: All right. I've already heard from

1 your father. He wrote to me. What do you have
2 to say, Miss Cushman, anything?

3 MISS CUSHMAN: No, your Honor, not at this time.

4 THE COURT: All right. Mr. Gottfried, Mr. Alan
5 Gottfried, I have been here five years and handled
6 a fair number of cases involving Schedule 1 or Schedule
7 2 -- which one is this one?

8 MISS CUSHMAN: Two.

9 THE COURT: --Schedule 2 narcotic controlled
10 substances. I don't recall any such case that I have
11 had where a seller was not sent to prison for a period
12 of time. It started off intending that your case you,
13 too, would have to go for some amount of time simply
14 because the serious import of commerce in narcotics
15 in this city, and the implications of that kind of
16 activity for just many, many citizens, not to mention
17 the effect it could have on families, loved ones
18 find themselves in use or abuse or whatever of drugs
19 whether it's cocaine or heroin. So, obviously, I
20 think I make clear to you what my views are about
21 trafficking in narcotics.

22 In your situation I have decided that I am not
23 going to send you to prison because I have taken into
24 consideration what your attorney has mentioned, that
25 you only got \$250 out of this whole thing. More

1 importantly, perhaps, is that you abandoned your
2 participation while the transactions were still going
3 on with the others. You got out. You apparently did
4 realize that you had backed into something very
5 serious, very wrong, and whether you were interested
6 in not getting caught and going to jail or whether you
7 just didn't want to be involved further doesn't matter.
8 You did get out of it and you got out, I guess, just
9 about in the nick of time.

10 I'm not going to spend a lot of time here dis-
11 cussing other aspects of the probation report. They
12 are better known to you and yours than I guess to
13 anybody. If you feel that you can get your problems
14 straightened out, you feel you've set a course and
15 an effort to do that, that's fine. As a matter of
16 fact I'll incorporate that as part of my sentence.
17 You are 29 years old. Of course age doesn't
18 necessarily have a relationship to what problems
19 you have either physical, emotional or mental, but
20 one thing is clear, you're well past the age where the
21 majority of people assume responsibilities of adult-
22 hood.

23 Now, if you find that complicated, difficult,
24 not within your reach for a variety of reasons that
25 can exist that's a factor; it has to be recognized.

1 At 29 years old you're moving along now. You are
2 maybe half-way through your life. You are moving
3 toward it. So this was a very, very stupid thing.
4 You've never been seriously in trouble.

5 It's adjudged that the imposition of sentence
6 is suspended. Defendant is placed on probation for
7 a period of two years subject to the standard probation
8 order of this court, and the defendant is to continue
9 his mental health treatment as a condition of probation.

10 There are two outstanding counts, Mr. Cohn.

11 MR. COHN: You Honor, at this time I move to
12 dismiss the outstanding counts of the indictment. I
13 think that's counts two and three.

14 MISS CUSHMAN: Government has no objection.

15 MR. COHN: Thank you very much, your Honor.

16 THE COURT: All right. Good day.

17 THE DEFENDANT: Thank you, your Honor.

18 MR. GOTTFRIED, SR: Thank you.

19 MISS CUSHMAN: In the event the bench warrant
20 upon which Mr. Gottisman was arrested in California
21 is still outstanding at this time it should be vacated.

22 THE COURT: Application is granted.

23 * * * * *

COPY RECEIVED
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OCT 13 1978
U.S. ATTORNEY
SO. DIST. OF N. Y.